

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 12, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1068-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 2007CF467**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MARK J. PETERSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Walworth County: JOHN R. RACE, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. Mark Peterson appeals from a judgment sentencing him after revocation of his probation and from an order denying his motion for sentence modification. We conclude that the circuit court did not rely upon inaccurate information at sentencing, and we affirm the judgment and the order.

¶2 Peterson's three-year term of probation for theft in a business setting was revoked after Peterson visited a bar in July 2010 and violated his probation rules. Peterson is a registered sex offender as a result of a 1995 sexual assault of N.O. Peterson's visit to the bar where N.O. worked figured in his sentencing after revocation of his probation for theft.

¶3 Peterson's probation revocation proceeding is necessary background for his claim that the circuit court relied upon inaccurate information at his sentencing after revocation. In Peterson's probation revocation proceeding, the administrative law judge found that Peterson violated his probation rules. Peterson admitted entering and consuming alcohol at the bar where N.O. worked. While the administrative law judge found that Peterson did not have contact with N.O. at the bar, the judge deemed dubious Peterson's claim that he did not recognize N.O. at the bar. The administrative law judge noted:

Mr. Peterson's [sexual assault] victim on July 3, 2010 was employed and working at the tavern in which he consumed alcohol on that date. Mr. Peterson in his statement denies knowing at the time he was present in the bar that his victim of a prior sexual assault was working there. She provided a statement to the Rockford Police Department regarding this incident. His victim, N.O., in that statement did not serve him or speak with him. The extent of her reported interaction consisted of eye contact and a belief that he was speaking loudly about her half-brother for her to hear. She was not presented as a witness nor was the detective that took her statement. He argues to bolster his claim that he did not recognize her that he has not seen his victim in several years. That assertion is dubious. I find however that the evidence presented is insufficient to prove [this alleged rule violation].

¶4 The revocation summary reported that Peterson's bar visit had a deleterious effect on N.O. She called a detective on July 3, 2010, while Peterson was in the bar. The Rockford Police report recited that "[N.O.] sounded scared

and said that she didn't know what to do.” N.O. told the detective that Peterson could have learned through family contacts that she was working at the bar, she saw Peterson walking toward the bar, she became upset and nervous, and she retreated to the back room to hide. N.O. stated that she did not want Peterson “to know where I worked and I didn't want people I work with and around knowing what he did to me.... I was truly scared.” N.O.'s stepmother reported to Rockford police that N.O. “had called her from the bar and told her [Peterson] was there and she [w]as hiding from him in the back room and frightened.” The probation agent opined “that Peterson was attempting to have some type of interaction with the victim of his sex offense. It is very unlikely Peterson would visit a random bar during the hours his victim was working there.”

¶5 The bar visit became an issue at Peterson's sentencing after revocation. At sentencing, the State expressed doubt that Peterson paid a random visit to the bar and suggested that Peterson's presence in the bar was concerning. The State reviewed Peterson's failure on probation and argued for the maximum sentence. Among other sentencing remarks, Peterson denied that he targeted N.O. when he went to the bar.

¶6 In sentencing Peterson, the circuit court noted Peterson's history of offenses, including the sexual assault of N.O. The court characterized Peterson's contact with N.O. as “unwanted,” and found that N.O. was upset when Peterson came to the bar. The court deemed the theft conviction a grave offense. The court found that Peterson had the character of a thief, he had failed on probation, the public required protection from him, and the maximum six-year sentence was appropriate.

¶7 Postconviction, Peterson sought resentencing based on this remark from the circuit court: “The state recommends the maximum penalty .... This is because of the seriousness of the crime, financial crime, and the argument that the defendant does not assume responsibility and further that he continues to have unwanted contact with [N.O.] terrifying her and that resulted in his revocation.” Peterson claimed that the circuit court relied upon inaccurate information that Peterson intentionally sought out N.O., that the contact with N.O. was unwanted, and that the contact was a basis for revoking his probation. Peterson also argued that the circuit court did not adequately explain why the maximum possible sentence was appropriate. The circuit court denied postconviction relief because it considered the appropriate sentencing factors and did not sentence Peterson based on inaccurate information.

¶8 A defendant has a “due process right to be sentenced upon accurate information.” *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. When a defendant seeks resentencing, the defendant must establish that the circuit court actually relied upon inaccurate information. *Id.*, ¶31. We independently review a defendant’s due process challenge to the sentence. *Id.*, ¶9. When reviewing a sentence, we look to the totality of the court’s remarks. *State v. J.E.B.*, 161 Wis. 2d 655, 674, 469 N.W.2d 192 (Ct. App. 1991), *cert. denied*, 503 U.S. 940 (1992).

¶9 Sentencing courts may consider numerous factors including the gravity of the offense, the defendant’s character, and the need to protect the public. *State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. The circuit court may consider all aspects of the defendant’s character and the conduct that the court believes illuminates that character. *See State v. Borrell*, 167 Wis. 2d 749, 774, 482 N.W.2d 883 (1992). Peterson concedes that the sentencing court

may draw reasonable inferences from information presented at sentencing about the defendant's character and conduct. *See State v. Gallion*, 2004 WI 42, ¶19, 270 Wis. 2d 535, 678 N.W.2d 197.

¶10 After reviewing the totality of the circuit court's remarks, *J.E.B.*, 161 Wis. 2d at 674, we conclude that the circuit court did not consider inaccurate information in sentencing Peterson. At the hearing on his postconviction motion, Peterson conceded that N.O. worked at the bar, N.O. did not want any contact with him, and she was quite upset by his presence. Despite Peterson's protestations, the circuit court reasonably inferred that Peterson visited the bar because N.O. worked there, and Peterson's contact with N.O. was unwanted and upsetting to N.O. The administrative law judge's findings regarding the basis for probation revocation did not preclude the circuit court's inferences. Because the circuit court could and did make such reasonable inferences, any passing reference to the unwanted contact being a basis for the probation revocation was of no consequence to the sentencing. The circuit court properly focused on Peterson's conduct, and the court did not rely upon inaccurate information in sentencing Peterson.

¶11 We conclude that the circuit court's sentencing rationale offers a sufficient basis for imposing the maximum sentence. Peterson failed on probation, and the other factors considered by the circuit court weighed in favor of a significant sentence: Peterson's character, history of other offenses and the need to protect the public. The weight of the sentencing factors was within the circuit court's discretion. *Harris*, 326 Wis. 2d 685, ¶28. Those factors clearly support the maximum sentence.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE  
809.23(1)(b)5.

